further liability to those who comply with it, and as such exemption is not effectual in the case of employers whose property may be proceeded against in admiralty, the act is as to them a denial of the equal protection of the laws. But the court decided that the exemption intended to be granted was exemption from suits at common law, and that all employers complying with the act have equally the benefit of exemption from common law actions. "If another remedy remains it results from the nature of the case and not from any attempt at discrimination on the part of the legislature. If in certain cases a remedy in admiralty still exists, that results from the dual nature of our government." The Supreme Court of Connecticut under a similar statute reached the same conclusion as the New York court, but based its decision upon the theory that the recovery was in contract and not in tort.[7]

It is a familiar rule of construction that when a statute is susceptible of two constructions, it is the duty of the court so to construe the statute as to preserve its constitutionality, if possible.[8] This rule of constrution has been followed by the New York court.

E. B. B.

ATTORNEYS: DISBARMENT FOR CONVICTION OF CRIME.— *In re Emmons*[1] was a proceeding on a petition for the disbarment of an attorney on the ground of his conviction of a crime involving moral turpitude. The petitioners offered in evidence the record of respondent's conviction of the felony of asking and taking a bribe. To the introduction of this evidence respondent objected on the ground that he had been subsequently duly pardoned for his offense by the governor of the state. The court sustained the objection and dismissed the proceeding.

In its decision the court relies largely on a Texas case decided on a very similar set of facts, quoting with approval and practically adopting the rule of law therein laid down, to the effect that a conviction "having been thus cancelled" by a pardon "all its force as a felony conviction was taken away" and it "could not, therefore, properly be said to afford 'proof of conviction of any felony' ".[2] This reasoning would seem to rest on a false conception of the nature of a pardon.[3] While it is true that a pardon does "cancel" and "take away the force of" a

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[7] Kennerson v. Thames Towboat Co. (Conn., 1915), 94 Atl. 372; Schuede v. Zenith S. S. Co. (1914), 216 Fed. 566.

[8] United States v. Delaware etc. Co. (1909), 213 U. S. 366, 53 L. Ed. 836, 29 Sup. Ct. Rep. 527.

[1] (Dec. 7, 1915), 21 Cal. App. Dec. 800.

[2] Scott v. State (1894), 6 Tex. Civ. App. 343, 25 S. W. 337.

[3] Williston, Does Pardon Blot out Guilt? 28 Harvard Law Review, 647.

conviction in some respects it does not do so to the extent necessarily implied by this rule. It does remove all legal punishment for the crime and removes for the future disabilities incurred as a part of the punishment[4] but it does not restore the ex-convict to a state of innocence nor in any way represent that he is as honest, reliable and upright as if he had constantly maintained the character of a law abiding citizen.[5] For it is beyond the power of a pardon or of any other law to wipe out the fact of the commission of a criminal act. That must, in the nature of things, forever remain as an indication of the character of the guilty person, for law cannot recall the past or even alter the character of an act once performed. As was said by the courts in the present case, "A pardon does not restore . . . . character." And that in the law pardon is an exercise of sovereign clemency toward the guilty and not of justice toward the innocent may be readily shown.[6] For instance, the credibility of a pardoned convict as a witness may be impeached by evidence of his conviction of the crime for which he was later pardoned; and his conviction is relevant evidence in determining his fitness for the position of trustee or for admission to citizenship.[7] Thus, where a man's character is in issue and his past conduct is relevant evidence the record of his conviction of crime, being evidence of conduct, is admissible despite a subsequent pardon.

It follows that, if the purpose of the California code in providing that an attorney may be removed for "his conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction shall be conclusive evidence"[8] is merely to provide a punishment for certain offenses, the court in the present case was undoubtedly right in its decision for the pardon put an end to the punishment for the offense. But if, on the other hand, its purpose is to provide for the elimination from the legal profession of those morally unfit to be entrusted with its high and responsible duties and to make the record of conviction conclusive evidence of moral unfitness, it would seem that the court erred.[9] And that the latter is the correct view as to the purpose and object of this particular code provision is

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[4] 29 Cyc. 1566.

[5] People v. Gilmore (1905), 214 Ill. 569, 73 N. E. 737, 69 L. R. A. 701; Nelson v. Commonwealth (1908), 128 Ky. 779, 109 S. W. 337, 16 L. R. A. (N. S.) 272.

[6] Cook v. Freeholders of Middlesex (1857), 26 N. J. Law, 326.

[7] Williston, Does Pardon Blot out Guilt? 28 Harvard Law Review, 647.

[8] Cal. Code Civ. Proc. § 287.

[9] The result in this case may, perhaps, be justified because of the long period of time that elapsed between the conviction and the disbarment proceeding, ten years. See People v. Coleman (1904), 210 Ill. 79, 71 N. E. 693.

indicated by its position in the Code of Civil Procedure in close juxtaposition to the provision making possession of good moral character a prerequisite to admission to the bar and making acts showing a lack of the same good moral character grounds for disbarment. The fact that it confines disbarment for conviction of crimes to those cases only where the crime involves moral turpitude points in the same direction. While the cases discussing the point involved in the present case are few and conflicting, the better considered are opposed to the rule it states.[10]

C. G. D.

CITIZENSHIP: EXPATRIATION: SUFFRAGE.—The United States Supreme Court in the case of *Mackenzie v. Hare*[1] affirmed the decision of the Supreme Court of California[2] by holding that a native born American woman lost her right to vote by marrying an alien even though they both continued to reside in the United States. Reasons for believing the California decision correct will be found in an earlier number of this Review,[3] together with a brief history of the question of expatriation in the United States.

The plaintiff in error especially urged two points: that the Act of 1907[4] could not be construed to expatriate an American woman who remained in this country after marriage, but applied only to those who went abroad; and that if it were so construed, it would violate the Fourteenth Amendment. The language of the statute is "That any American woman who marries a foreigner shall take the nationality of her husband." The court held that this language would not permit of the construction contended for. As to the constitutionality of the law, the court pointed out that there was no arbitrary exercise of power by Congress, but a regulation of the status of citizenship properly impelled by both domestic and international policy.

Here we have an apparent conflict between the principle that an American citizen cannot be deprived of his citizenship without his consent, except in punishment for crime, and the policy against a dual allegiance for husband and wife. Congress having cast its vote for the policy of single allegiance, the courts have decided that, though there be no actual consent, the act of marriage to an alien will conclusively imply consent to expatriation. As was said

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[10] Nelson v. Commonwealth (1908), 128 Ky. 779, 109 S. W. 337, 16 L. R. A. (N. S.) 272; Matter of an Attorney (1881), 86 N. Y. 563; People v. Gilmore (1905), 214 Ill. 569, 73 N. E. 737, 69 L. R. A. 701; People, ex rel. Colorado Bar Ass'n v. Burton (1907), 39 Colo. 164, 88 Pac. 1063, 121 Am. St. Rep. 165; (contra) Penobscot Bar v. Kimball (1875), 64 Me. 140.

[1] (Dec. 6, 1915), 239 U. S. 299, 36 Sup. Ct. Rep. 106.

[2] Mackenzie v. Hare (1913), 165 Cal. 776, 134 Pac. 713.

[3] 2 California Law Review, 72.

[4] 34 U. S. Stats. at L. 1228.